

RECEIVED

AUG 26 2008

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

AT 8:30 WILLIAM T. WALSH M  
CLERK

<p>AVAYA INC., v. TELECOM LABS, INC., TEAMTLI.COM CORP., CONTINUANT, INC., SCOTT GRAHAM, DOUGLAS GRAHAM and BRUCE SHELBY</p>	<p>Hon. Garrett E. Brown, U.S.D.J. Hon. John J. Hughes, U.S.M.J. Plaintiff, Civil Action No. 06-02490 <b>FIFTH ORDER AMENDING CONSENT DISCOVERY CONFIDENTIALITY ORDER</b></p>
	<p>Defendants.</p>

THIS MATTER having been brought before the Court on the motion of Archer & Greiner, P.C., attorneys for Plaintiff; the parties, through their counsel of record having consented to the form and entry of this Order;

AND FOR GOOD CAUSE having been shown;

IT IS on this 26<sup>th</sup> day of August 2008 ORDERED that this Court's Consent Discovery Confidentiality Order dated March 23, 2007 and all amendments thereto to date (collectively "Confidentiality Order") are further amended as follows.

1. Paragraph 1(b) is amended to read as follows:

*b. "Confidential Document" shall mean any Protected Litigation*

*Material that has been designated as "CONFIDENTIAL UNDER PROTECTIVE ORDER," "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE*

*COUNSEL ONLY" or "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" in the manner set forth in paragraph 5.*

2. Paragraph 1(d) is amended to read as follows:

*d. "Legend" shall mean a large stamp or similar insignia stating, "CONFIDENTIAL UNDER PROTECTIVE ORDER," "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" or "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" or other appropriate term or terms connoting the confidentiality of the document.*

3. Paragraph 1(f) is amended to read as follows:

*f. "Objecting Party" shall mean any party to the Litigation responding to, and objecting to, a designation of Protected Litigation Materials as "CONFIDENTIAL UNDER PROTECTIVE ORDER" or "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" or "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY".*

4. Paragraph 3 is amended to add subparagraph (c) as follows:

*c(1) Protected Litigation Material may be designated as HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" only if the Producing Party has a good faith belief that the Protected Litigation Material contains or constitutes software code*

*or highly confidential information concerning the design, development, operation, logic, algorithms or content of any hardware, software or firmware on Avaya Telephony Products or the security of Avaya Telephony Products, and that disclosure of such information would place the Producing Party or third parties at a serious competitive or other disadvantage and warrants such restrictive designation.*

*c(2) Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" shall be used only for purposes of this Litigation, and for no other purpose whatsoever.*

*c(3) Unless the Producing Party consents in writing or the Court orders otherwise, Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom, and any facts or information obtained or derived therefrom:*

*(A) may not be used in a deposition, and  
(B) may not be filed with the Court except under seal in the manner provided in the Confidentiality Order.*

*c(4)(A) The Producing Party need not produce any Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL*

***INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL***

*ONLY" other than in hard paper copy.*

*(B) Unless the Producing Party consents in writing, no person other than the Producing Party may make an electronic copy of any Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL*

*ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom.*

*(C) The Receiving Party shall make copies, including photocopies, of Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom only when and if necessary for purposes of this Litigation.*

*(D) Because it is the intent of this Order that the Receiving Party minimize the number of copies, including photocopies, of Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom that are in existence, and thus subject to disclosure, at all times*

*during the course of this Litigation and after this Litigation, the Receiving Party shall destroy copies, including photocopies, of Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom promptly after each such copy is no longer necessary for purposes of this Litigation.*

*(E) The Receiving Party may transmit a hard paper copy of Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom and any documents containing any facts or information obtained or derived therefrom to those persons to whom disclosure may be made under this Order only by (i) personal hand delivery by a person to whom disclosure may be made under this Order or (ii) a commercial courier of paper whose regular business is delivery service and that regularly employs a system for tracking the location, delivery and receipt of parcels that it delivers.*

*c(5) Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY," any summaries, charts, memoranda, notes or other documents made therefrom or any documents containing any facts or information obtained or derived therefrom, and any facts or information obtained or derived therefrom shall be disclosed only to the following persons:*

*A. The Court and Court personnel;*

*B. Outside legal counsel in this litigation and regular employees of such attorneys to whom it is necessary that the Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" be shown for purposes of this Litigation;*

*C. Expert witnesses, consultants or advisors who are employed or retained by or on behalf of any of the parties or counsel for the parties hereto whose review of the information is, in good faith, reasonably necessary to assist in the prosecution or defense or trial of the Litigation, provided that, in advance of such disclosure, the Producing Party consents in writing to such disclosure or the Court orders otherwise.*

5. Paragraph 4 is amended to read as follows:

*Duty to Advise of Order. Unless the Producing Party agrees otherwise, Confidential Documents may be disclosed to a person referred to in paragraphs 3.a(2), 3.a(3), 3.a(4), 3.a(5), 3.a(6), 3.b(2), 3.b(3), 3.b(4), 3.b(5), 3.c(5)(B) and 3.c(5)(C) only after such person has been advised of the terms and operation of this Order and/or has been provided a copy of this Order. Any party disclosing Protected Litigation Materials designated "CONFIDENTIAL UNDER PROTECTIVE ORDER" or "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" to a person referred to in paragraphs 3.a(4), 3.a(5), 3.b(3), 3.b(4) or 3.c(5)(C) shall provide a copy of this Order to such*

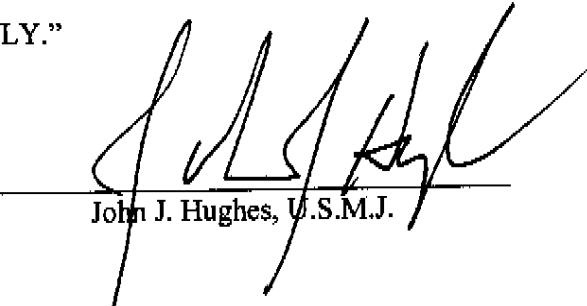
*person and shall obtain that person's agreement to be bound by this Order by executing the Exhibit A attached to this Court's CONSENT DISCOVERY CONFIDENTIALITY ORDER ("Exhibit A") prior to the disclosure of any Confidential Documents. Any party disclosing Protected Litigation Materials designated as "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY" to a person referred to in paragraphs 3.a(4), 3.a(5), 3.b(3), 3.b(4) 3.c(5)(B) or 3.c(5)(C) shall provide a copy of this Order to such person and shall obtain that person's agreement to be bound by this Order by executing Exhibit A prior to the disclosure of any Confidential Documents. A copy of the executed Exhibit A shall be served on opposing counsel promptly after it is executed.*

6. To the extent not inconsistent with the provisions of this Order:

(a) all provisions of the Confidentiality Order shall apply to Protected Litigation Material designated "HIGHLY CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY"; and

(b) if there is a conflict between the provisions of the Confidentiality Order that apply to Protected Litigation Material designated as "CONFIDENTIAL UNDER PROTECTIVE ORDER," and that designated "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL ONLY", the provisions that apply to Protected Litigation Material designated as "CONFIDENTIAL UNDER PROTECTIVE ORDER - OUTSIDE COUNSEL

ONLY" shall apply to Protected Litigation Material designated "HIGHLY  
CONFIDENTIAL TECHNICAL INFORMATION UNDER PROTECTIVE  
ORDER - OUTSIDE COUNSEL ONLY."



John J. Hughes, U.S.M.J.

The undersigned hereby agree to the  
form and entry of the within Order.

ARCHER & GREINER, P.C.  
One Centennial Square  
Haddonfield, NJ 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff,  
Avaya Inc.

KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP  
One Newark Center, 10th Floor  
Newark, New Jersey 07102  
(973) 848-4000  
Attorneys for Defendants, Telecom Labs, Inc.,  
TEAMTLI.COM Corp., Continuant, Inc. Scott  
Graham, Douglas Graham and Bruce Shelby

BY: /s/ Robert T. Egan  
Robert T. Egan, Esq.

By: /s/ David S. Kwon  
Anthony P. La Rocco, Esq.  
David S. Kwon, Esq.

Dated: August 21, 2008

Dated: August 21, 2008

3392983